dollar amount used to determine the lengthening of the 5-year distribution remains unchanged at $145,000.

The limitation used in the definition of a highly compensated employee under § 414(q)(1)(B) remains unchanged at $80,000.

The annual compensation limit under §§ 401(a)(17) and 404(l) remains unchanged at $160,000. The annual compensation limit under § 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under § 401(a)(17) to be taken into account, is increased from $265,000 to $270,000.

The compensation amount under § 408(k)(2)(C) regarding simplified employee pension plans (SEPs) remains unchanged at $400. The compensation amount under § 408(k)(3)(C) for SEPs remains unchanged at $160,000.

The limitation under § 408(p)(2)(A) regarding simple retirement accounts remains unchanged at $6,000.

The limitation on deferrals under § 457(b)(2) and (c)(1) concerning eligible deferred compensation plans of state and local governments and of tax-exempt organizations remains unchanged at $8,000.

The compensation amounts under § 1.61–21(f)(5)(i) and (iii) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation purposes are $70,000 and $145,000, respectively.

Administrators of defined benefit or defined contribution plans that have received favorable determination letters should not request new determination letters solely because of yearly amendments to adjust maximum limitations in the plans.

Returns Relating to Interest on Education Loans

Notice 98–54

PURPOSE

This notice modifies Notice 98–7, 1998–3 I.R.B. 54, which describes the information reporting requirements under § 6050S of the Internal Revenue Code for 1998 that apply in the case of payments of interest on qualified education loans. Specifically, this notice provides that no information reporting is required with respect to "mixed use" loans in light of amendments made to § 221(e)(1) by the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Pub. L. No. 105–206, § 6004(b)(1), 112 Stat. 792. This notice also provides that the Internal Revenue Service and the Treasury Department are extending the application of Notice 98–7 to information reporting required under § 6050S for 1999.

BACKGROUND

Section 6050S, as enacted by the Taxpayer Relief Act of 1997, Pub. L. No. 105–34, § 202(c), 111 Stat. 808, requires the filing of information returns by persons who receive payments of interest that may be deductible as interest on a qualified education loan ("payees"). Section 6050S(e) provides that, except as provided in regulations, the term "qualified education loan" has the meaning given such term by § 221(e)(1). Section 6050S requires that payees file the specified information returns with the Service and provide a corresponding statement to the individuals named on the information return ("payor") showing the information that has been reported.

The requirements for reporting qualified education loan interest under § 6050S are generally described in Notice 98–7, along with specific information reporting requirements for 1998. Section D of the Discussion portion of Notice 98–7 provides a rule for reporting payments of interest made on or after January 1, 1998, on mixed use loans or revolving accounts, such as credit card accounts. Payments of interest on these loans are treated under Notice 98–7 as interest paid with respect to a qualified education loan (and must be reported as such) only if the mixed use loan or revolving account is certified by the payor to be, in part, a qualified education loan, and the payee has a reasonable method for allocating the interest payments to the part of the loan that is certified to be a qualified education loan. In addition, Section E of the Discussion provides that, with respect to loans made on or after January 1, 1998, that are secured by real property, if a payor certifies all or part of such a loan as a qualified education loan, only the certified portion of the loan may be treated as a qualified education loan for purposes of information reporting. The remaining portion must be treated as a mortgage subject to information reporting under § 6050H.

DISCUSSION

Section 221(e)(1), as amended by RRA 1998, provides that the term "qualified education loan" means any indebtedness incurred by the taxpayer *solely* to pay qualified higher education expenses. The amendment to § 221(e)(1) is effective as if included in the Taxpayer Relief Act of 1997 and applies to interest payments due and paid after December 31, 1997. Thus, the payee must not report under § 6050S information on mixed use loans (whether or not secured by real property) because they are not qualified education loans under § 221(e)(1) as amended. However, information reporting under § 6050S continues to be required for any loan (including a loan secured by real property) or revolving account, such as credit card account, that the payor certifies is used *solely* for the purpose of paying qualified higher education expenses. The payee may rely on this certification when filing Form 1098–E, Student Loan Interest Statement, for 1998 and need not verify the payor's actual use of the funds. In all other respects, the requirements of § 6050S with respect to qualified education loan interest reporting for 1998 remain the same as described in Notice 98–7.

The Service is currently revising Form W–9S, Request for Student's or Borrower's Social Security Number and Certification, to remove the certification for mixed use loans. In addition, payees should disregard the instructions regarding mixed use loans and revolving accounts, which are found in the Form 1098-E section of the 1998 Instructions for Forms 1099, 1098, 5498, and W–2G. Those instructions will be revised for 1999.

The Treasury Department intends to issue regulations soon on the information reporting requirements of § 6050S. Pending issuance of those regulations, the Service is extending the application of Notice

98–7, as modified by this notice, for an additional year, *i.e.*, to information reporting required under § 6050S for 1999.

For 1999, payees must follow the rules provided in Notice 98–7, as modified by this notice, for information reporting under § 6050S. For example, a payee that receives payments of interest on a qualified education loan in 1999 must file a Form 1098–E that includes the same information that was required by Notice 98–7, as modified by this notice. The Forms 1098-E for 1999 must be filed with the Service by February 28, 2000, if filed on paper or by magnetic media, or by March 31, 2000, if filed electronically. A statement containing the same information as the Form 1098-E filed with the Service must be furnished to the payor by January 31, 2000. Similarly, Notice 98–7, as modified by this notice, applies for 1999 with respect to how penalties will be administered under §§ 6721 and 6722 for information returns required under § 6050S.

EFFECT ON OTHER DOCUMENTS

Notice 98–7 is modified.

DRAFTING INFORMATION

The principal author of this notice is John J. McGreevy of the Office of the Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice contact him on (202) 622-4910 (not a toll-free call).

Awards of Costs and Certain Fees in Tax Litigation

Notice 98–55

Section 3101(e) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, amended § 7430 of the Internal Revenue Code to add a "qualified offer rule" that treats certain taxpayers as prevailing parties when the United States has rejected their offer to settle their tax controversy. Treatment as a prevailing party is a necessary element for a taxpayer to receive an award of reasonable administrative and litigation costs in connection with an administrative or court proceeding. The Service and the Treasury Department intend to publish guidance to address several issues raised by the new qualified offer rule and invite public comment on these issues.

BACKGROUND

Under § 7430, as amended, a taxpayer qualifying as a prevailing party under this new qualified offer rule may be eligible to receive an award for reasonable administrative and litigation costs in connection with an administrative or court proceeding, even when the position of the United States is reasonable and even though the taxpayer does not substantially prevail in the tax controversy. To qualify as a prevailing party under this new rule, a taxpayer must meet the net worth requirements and make a "qualified offer" during the "qualified offer period." If the Service rejects the taxpayer's last qualified offer made during the qualified offer period, and the tax liability of the taxpayer (as determined by a court judgment) is less than the tax liability would have been had the last qualified offer been accepted, the taxpayer qualifies as a prevailing party under § 7430. A "qualified offer" is a written offer that is made by the taxpayer to the United States during the qualified offer period, specifies the amount of the taxpayer's tax liability (determined without regard to interest), is designated a qualified offer when made, and remains open until the earliest of: (1) the date the offer is rejected, (2) the date the trial begins, or (3) 90 days from the date of the offer. The "qualified offer period," during which a qualified offer may be made, begins on the date the 30-day letter is mailed by the Service to the taxpayer and ends on the date which is 30 days before the date the case is first set for trial.

ISSUES FOR COMMENT

The Service and Treasury invite public comments on the following issues (and any others) raised by the new qualified offer rule:

Comparison of Liability:

In multiple issue tax cases, partial settlements involving discrete issues often occur throughout both the administrative and court proceedings. Depending upon when a qualified offer is made, issues involved in the proceeding at the time of the offer may not be part of the court's adjudication but may still be part of the judgment entered by the court. If settlement occurs before the court proceeding is commenced, those issues would not be part of the judgment. The Service and Treasury are interested in receiving comments on how the settlement of issues at the various stages of the proceedings should be taken into account in comparing the taxpayer's liability under the judgment with that under the qualified offer.

(1) In comparing a taxpayer's tax liability under a qualified offer with the taxpayer's tax liability under a court judgment, should the comparison be limited to court-determined issues or should settled issues also be taken into account?

(2) If settled issues are included in the comparison, should issues settled before the court proceeding is commenced be included in the comparison?

Content of Offer:

If it is determined that settled issues are not to be taken into account, in whole or in part, a meaningful comparison will only be possible if the qualified offer is specific enough to carve out those issues from the comparison. On the other hand, if all settled issues are to be included in the comparison, a lump-sum offer could be compared with the liability under the judgment as modified to take into account the settled issues not included in the judgment. The Service and Treasury are interested in receiving comments on how the qualified offer rule should be applied in such multiple issue cases.

(1) May a qualified offer be in the form of a lump-sum amount when the case involves multiple tax issues (one or more of which may be settled while others may be determined by the court)?

(2) How much specificity should a qualified offer be required to contain when the case involves multiple tax issues (one or more of which may be settled while others may be determined by the court)?

Timing of Offer:

In the U.S. Tax Court, the court places cases on a trial calendar that lists the cases to be heard by the court during the designated trial session. Notices informing the parties that their respective cases are set for trial during the designated trial session